Illiana Transit Warehouse Corp. *and* General Drivers, Warehouse and Helpers Local 142, International Brotherhood of Teamsters, AFL–CIO. Cases 13–CA–33319, 13–CA–33433, 13–CA–33942, and 13–CA–34298

February 27, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND HIGGINS

On November 21, 1996, Administrative Law Judge Wallace H. Nations issued the attached decision. The General Counsel filed exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Illiana Transit Warehouse Corp., Hammond, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(d) and reletter the subsequent paragraphs.

"(d) Discriminating against employees in retaliation for their union and other protected concerted activities by: changing or reducing the work hours of employees; changing the work assignments of employees; denying access to the Respondent's accounting office; eliminating breaks and the use of the lunchroom for breaks; refusing to allow unit employees to work at other facilities owned by the Respondent's parent company; more strictly enforcing its attendance policy; refusing to grant employees a regular yearly wage increase; and refusing to grant employees a regular Christmas bonus."

2. Substitute the attached notice for that of the administrative law judge.

[1] Neither party has excepted to the judge's disposition of unfair labor practice issues. The General Counsel excepts only to the judge's failure to include appropriate remedial language in the recommended Order and notice for the 8(a)(3) violations found. We find merit in the exceptions and will include the additional remedial language in a modified Order and a substitute notice.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees with the loss of a wage increase and other benefits because of their union and/or protected concerted activities.

WE WILL NOT interrogate employees about their activities on behalf of the Union and create the impression that their union activities are under surveillance.

WE WILL NOT impliedly threaten employees with stricter enforcement of work rules because of their activities on behalf of the Union.

WE WILL NOT threaten employees with a freeze of employee wage and other benefits because of their activities on behalf of the Union.

WE WILL NOT discriminate against our employees, because they have engaged in union and other protected concerted activities, by: changing or reducing their work hours and work assignments; denying them access to our accounting office; eliminating breaks and the use of the lunchroom for breaks; refusing to allow them to work at other facilities owned by our parent company; more strictly enforcing our attendance policy; and refusing to grant a regular yearly wage increase and a regular Christmas bonus.

WE WILL NOT unilaterally and without notice to or bargaining with the Union, change and/or reduce the working hours of unit employees.

WE WILL NOT unilaterally and without notice to or bargaining with the Union, change the work assignments of unit employees.

WE WILL NOT unilaterally and without notice to or bargaining with the Union, change the working conditions of unit employees by denying access to our accounting office, general office and telephone, eliminat-

ing breaks and the use of the lunchroom for breaks, refusing to allow unit employees to work at other facilities owned by our parent company and more strictly enforcing our attendance policy.

WE WILL NOT unilaterally and without notice to or bargaining with the Union, refuse to grant to our employees a regular yearly wage increase and Christmas bonus.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, meet and bargain in good faith with the Union over the terms and conditions of employment of our employees in the following unit:

> All full time and regular part-time warehouse employees employed by us at our facility currently located at 1334 Field Street, Hammond, Indiana 46320; but excluding all office clerical employees and all other employees, including technical employees, salespersons, guards and supervisors as defined in the Act.

WE WILL make our affected unit employees whole for losses they suffered by our withholding a scheduled general wage increase and Christmas bonuses in 1995, with interest.

WE WILL rescind the changes made on or after May 5, 1995, in the work schedules and the hours of work of employees Preston Wells, Frank Eggers, Bob Horn, and Rick Polus, and make them whole for any monetary losses they may have suffered as a result of this discrimination against them, with interest.

WE WILL rescind the changes we made in the working conditions of unit employees, including denying access to our accounting office and general office, eliminating breaks and the use of the lunchroom for breaks, refusing to allow unit employees to work at other facilities owned by our parent company and more strictly enforcing our attendance policy, and restore the status quo existing prior to May 5, 1995.

WE WILL rescind and remove any reference to any adverse personnel action taken against any unit employee pursuant to the changes in terms and conditions of employment, rules, and enforcement of rules as set out above.

ILLIANA TRANSIT WAREHOUSE CORP.

Diane E. Emich, Esq., for the General Counsel.
Walter J. Liska, Esq., and *Renee L. Legrand, Esq.*, of Chicago, Illinois, for the Respondent.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Chicago, Illinois, on July 15–17, 1996. General Drivers, Warehouse and Helpers Union Local 142, International Brotherhood of Teamsters, AFL–CIO (the Union) filed the charge in Case 13–CA–33319 on April 11, 1995, in Case 13–CA–33433 on May 25, 1995, in Case 13–CA–3942 on January 11, 1996, and in Case 13–CA–34298 on May 9, 1996. A consolidated complaint issued on June 14, 1996.[1] Illiana Transit Warehouse Corp. (Respondent or the Company) filed a timely answer in which, inter alia, it admits the jurisdictional allegations and certain allegations relating to supervisory status.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, engages in the business of warehousing and transporting freight from its office and facility in Hammond, Indiana. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background Facts and Issues for Determination*

Illiana Transit Warehouse of Hammond, Indiana, is owned by Faure Brothers, Inc., which also owns and operates two other warehouses in the general area, Gateway Warehouse (Gateway) in Hammond, and Great Lakes Warehouse (Great Lakes) in Calumet City, Illinois. Amy Faure is president of all of these corporations and her husband, Craig Crohan, is vice president of each.[2] Illiana has the capacity for different types of storage including chemicals and food grade products. Gateway is primarily used to store chemical commodities and Great Lakes is primarily used to store food grade products. The involved three warehouses share common ownership and top management. Wage and labor policies generally are determined by Amy Faure with the help of her husband and the Companies' controller, Jerry Helton. Prior to May 5, warehouse employees of Illiana were transferred periodically to work at Gateway and Great Lakes when there was either not enough work for them at Illiana or there was a temporary need for more employees at one or the other two warehouses. Illiana's maintenance employee was also transferred periodically to perform maintenance work at the other two warehouses. In all cases, these employees were paid for such work in their regular Illiana paycheck.

Prior to 1986, the warehouse employees at Illiana had been represented by the Union. In that year the Union was decertified and the employees remained unrepresented by a union until 1995. In March 1995, a number of the Illiana warehouse employees sought out the Union for representation. Following an initial meeting or two with the Union's representatives, these Illiana employees signed an open letter to management noting that the named employees were engaged in organizing. This open letter was thereafter presented

[1] All dates are 1995 unless otherwise indicated.

[2] Amy Faure Crohan for business puposes uses the name Amy Faure. She will be referred to in this decision by her business name.

to Helton on March 17 by employees Webster, Polus, West, Ooms, and Newcomb.[3] A representation petition was filed March 22 or 23, and an election, which was won by the Union, was held on May 5.

In the critical period between the filing of the representation petition and the election, Respondent engaged in a campaign to win the election. During this campaign it is alleged to have violated Section 8(a)(1) of the Act by threatening employees with the loss of a wage increase, a wage freeze, loss of various existing benefits, and engaging in unlawful interrogations and surveillance of employee activities.[4] Following the election, Respondent is alleged to have violated the Act by unilaterally changing its existing work rules and enforcing work rules more stringently, changing the work duties, work schedules, and work locations of its unit employees and in some cases reducing the hours of these employees. It is also alleged to have unlawfully withheld an annual wage increase and an annual Christmas bonus to these employees.

It is further alleged that about a year following the election, Respondent, through employee Michelle Streeter, threatened an employee because of his union activity, and thereafter terminated the employment of this person because of his union activity. Specifically, the consolidated complaint alleges that the Respondent violated the Act by:

1. In or about the first of April, through its agent, Joe Andretti, threatened employees with the loss of a wage increase because of their union and/or protected concerted activities.

2. About May 5, through its representatives, threatened employees with loss of a wage increase because of their union and/or protected concerted activities.

3. In or about the first week of May, through its agent, Amy Faure, threatened employees with loss of a wage increase because of their union and/or protected concerted activities.

4. About May 4, through its agent, Amy Faure:

(a) Threatened employees with loss of benefits including Respondent's 401(k) plan because of their activities on behalf of the Union.

(b) Interrogated employees about their activities on behalf of the Union and/or created the impression that their union activities were under surveillance.

5. About May 8, through its agents, Craig Crohan and Bill Crohan, impliedly threatened employees with stricter enforcement of work rules because of their activities on behalf of the Union.

6. About May 15, through its agents, Joe Andretti and Joe Lilli, impliedly threatened employees with stricter enforcement of work rules because of their activities on behalf of the Union.

7. About April 15, by letter signed by Craig Crohan, threatened employees with a freeze of employee wage and other benefits rules because of their activities on behalf of the Union.

8. About May 15, through its agent, Joe Andretti, threatened employees with a freeze of employee wage and other benefits rules because of their activities on behalf of the Union.

9. About April 12, 1996 by its agent, Michelle Streeter:

(a) Threatened employees that their continued employment depended upon their staying away from the Union.

(b) Told employees the Respondent could not hire employees, except through the use of a temporary employee agency, because of the Union.

(c) Threatened employees with plant closure because employees had selected the Union to be their collective-bargaining representative.

10. About the dates set forth opposite their names, changed and/or reduced the work hours of the employees named below:

Preston Wells	May 5
Frank Eggers	May 8
Bob Horn	May 10
Rick Polus	May 15

11. About the dates set forth opposite their names, changed the following working conditions of the employees named below:

Preston Wells	Beginning of May—denial of access to Respondent's office
Bob Horn	May 5—change in work assignment including loss of beeper
Rick Polus	May 5—change in work assignment
Frank Eggers	May 5—change in work assignment
Scott Fine	May 5—denial of access to Respondent's office

12. About May 5, refused to grant to its employees a regular yearly wage increase.

13. About December, refused to grant its employees a regular Christmas bonus.

14. About May 6, 1996, discharged and/or refused to continue to employ its employee Mark Murphy and/or caused Mark Murphy to be discharged.

B. *Alleged Violations of the Act Occurring During the Critical Period Prior to the Election*

During the period after the filing of the open letter to management and the representation petition, and the election on May 5, Respondent is alleged to have violated the Act by certain conduct of its officers and statutory supervisors, and by the wording of certain campaign literature it distributed to its affected employees.

Following receipt of the charge in Case 13–CA–33319 on April 14, Amy Faure sent to employees a letter in which she notes her opposition to the Union's organizing campaign, but

[3] As pertinent on the issue of Respondent's knowledge of employees' support for the Union, the letter is also signed by these employees and Bob Horn, Frank Eggers, and Scott Fine.

[4] One of the supervisors alleged to have engaged in activity in violation of the Act is Respondent's warehouse foreman, Joseph Andretti. Respondent has denied his supervisory status. I find that Andretti is a supervisor within the meaning of Sec. 2(11) of the Act. He has the apparent authority to discipline employees, including firing employees. He was shown to have assigned work to employees, sign and approve changes to employee timecards, and tests and recommends whether job applicants are hired. *Custom Bronze & Aluminum*, 197 NLRB 397 (1972).

promises employees that no one would be terminated because of their support for the Union. This letter was given to employees at some point in April. Thereafter, Respondent waged an active campaign against the Union prior to the election. It distributed antiunion literature to employees, held meetings with employees, and, through its management, interrogated, and in some instances threatened employees with loss of benefits if the Union were voted in. A description of the literature distributed, the interrogations held, and the threats made are set out below.

1. Alleged unlawful statements made in campaign literature

At some point during the campaign, Respondent distributed to employees a document entitled, "Questions and Answers," which was signed by Craig Crohan, inter alia, it poses the question: "What happens to my current wages and benefits if the union is voted in?" It answers: "Your current wages and benefits will be frozen with no changes during the negotiation of a contract. In fact: any wage increases that go to any other facilities or employees here at Field Street who are not part of the election group cannot be implemented here. It is likely that negotiations may take a long time—even—up to one year. Your wages and benefits would be frozen at current levels for the period of negotiation until a final agreement is reached."

It also posed the question: "I have heard that we can only gain from negotiations—aren't our current wages and benefits the base we negotiate from?" It answers: "ABSOLUTELY NOT! *Everything is negotiable.* Bargaining on a union contract need not start from a base of present benefits. All wage rates and all benefits are subject to bargaining (401(k), holidays, vacations, etc.). For example, the union would bargain away a present benefit (i.e., 401(k)) in exchange for getting Illiana Transit Warehouse to deduct union dues from your paycheck before you get it." "In fact, the National Labor Relations Board has stated, '[T]here is, of course, no obligation on the part of the employer to contract to *continue all existing benefits*, nor is it an unfair labor practice to offer *reduced benefits*.' This quotation is not meant to imply anything other than to inform you of the true facts—as contrasted to what the union would like for you to believe."

Amy Faure had distributed to employees during the campaign another document bearing her signature. This document states:

> A number of employees are beginning to wonder what will Local 142 do for the employees if they win the election? I hope all of the employees working in L.S.F. Trucking and Fields Street Warehouse are aware that Local 142 did represent the Illiana Transit employees previously (1940's–1986). They were *voted out* by the employees in 1986. Maybe some of you who will vote in the upcoming election should ask the employees who were here in 1986 WHY THEY WERE VOTED OUT.
>
> Irregardless of those reasons, all of you who are in the eligible voters group should clearly understand that you are "gambling with" current wages, benefits and terms and conditions of employment. If you vote to have Local 142 represent you, all of our current wages, and benefits will be frozen during any negotiations for a contract. Once the contract is negotiated, it (the contract) will establish our wages, benefits and terms and conditions of employment.

The document then presents the employees with a box graph headed by the question, "What are you Gambling With?" It then lists current employee benefits and under the box headed "Under Local 142" it presents just question marks. Beneath the boxes is the following: "Do you feel lucky? Your 'odds' may be better in the Indiana Lottery!! Vote NO on Election Day!"

In the box relating to the particular current benefit, the 401(k) program, is handwritten "ask Larry Goggans." This was placed on the document by Amy Faure's mother[5] and refers to an employee who had worked for Respondent for a number of years who was dying. He was not receiving a pension from the Union though he had been a union member when the Union represented the Company's employees.

I find that the statement that wages would be frozen until a contract is negotiated to be an unlawful threat of loss of benefits and less favorable treatment if the Union were voted in. As will be discussed in detail at a later point in this decision, Respondent's warehouse employees expected an annual wage increase. Respondent had for several years followed the practice of granting annual wage increases in late spring to all warehouse employees at all three of its warehouses. The "Questions and Answers" document even makes a point that the wage increases to employees at the two warehouse facilities not involved with union activity would not be given to Illiana warehouse employees.[6]

Depending on the surrounding circumstances, an employer which indicates that collective bargaining "begins from scratch" or "starts from zero" or "starts with a blank page" may or may not be engaging in unlawful coercive conduct under Section 8(a)(1) of the Act. Such statements are violative of the Act when, in context, they effectively threaten employees with the loss of existing benefits and leave them with the impression that what they may ultimately receive depends in large measure on what the union can induce the employer to restore. On the other hand, such statements are not unlawful when additional communication to the employees establishes that a reduction in wages or benefits will occur only as a result of the normal give and take of collective bargaining. The totality of all the circumstances must be viewed to determine the effect of the statements on the employees. Amy Faure's statements in the employees distribution that employees were "gambling with" their current wages, benefits, and terms and conditions of employment implies a loss of wages and benefits if the Union should win the election. Her further statement, "Do you feel lucky," only adds to the implied threat of losses to employees of their wages and benefits in retaliation for their choice of the union as their collective-bargaining agent. At no time did Respondent attempt to dispel these implications by advising employees that any loss would occur only as a result of the

[5] Amy Faure's mother Emily Faure passed away at some point following the election. During the period of the campaign, she was chairman of the board of Faure Brothers, Inc.

[6] See *Teksid Aluminum Foundry*, 311 NLRB 711, 717 (1993); *Wellstream Corp.*, 313 NLRB 698, 707 (1994); and *Treanor Moving & Storage Co.*, 311 NLRB 371, 374 (1993).

normal give and take of collective bargaining. Absent such clarification, Amy Faure's statements violate Section 8(a)(1) of the Act.[7] As will be shown below, Respondent followed up with these written threats of loss of wages and benefits with direct management conversations with employees where such threats were reinforced.

2. Alleged unlawful statements made during employee meetings

In April 1995, Respondent held an employee meeting conducted by Amy Faure, Craig Crohan, and the Respondent's labor counsel. Respondent's counsel told the employees that they would not receive a raise because it would be considered a bribe. At this employee meeting, warehouse employee Frank Eggers remembers the attorney saying that if the Employer didn't have a specific program in place for wage increases it couldn't give one during the pendency of the union campaign.

The week before the election Eggers attended another employee meeting. Attending this meeting were all employees and Amy Faure, Emily Faure, Joe Lilli, and Craig Crohan. Eggers testified that Amy Faure said that raises could be considered a bribe and that is why the employees were not getting one. She then invited the employees to tell her their problems. According to Eggers, she then went to employee Preston Wells and grabbed him by the shoulder saying, "This is one of the guys that tried to keep the union when they decertified in 1986." At this point, Emily Faure said, "Preston, I'm surprised at you," which embarrassed Wells.

At his meeting, employee Scott Fine remembered Amy Faure saying that following the start of the critical period employees could not receive pay increases until the whole union thing was taken care of, as they would be considered a bribe. She added that if the Union is voted in it was up to her whether the 401(k) plan would or would not be given to employees.

As a general proposition, an employer during the preelection period is required to administer wage increases as if the petition had not been filed. I find that the Respondent's statement to employees concerning the wage freeze to be a violation of Section 8(a)(1) of the Act. As noted above, granting of a wage increase was an established practice and the withholding of the increase was an unexpected change in past practice, thus penalizing Illiana employees for engaging in union activity. Moreover, there was no indication that the expected increases would be restored after the election. Indeed, as can be seen from the literature discussed above, the wage freeze was to continue until a contract was reached, an event which the Employer predicts will be a long time coming.[8]

3. Alleged unlawful conversations between management and employees[9]

In April, Warehouse employee Edward Webster had a conversation with Warehouse Foreman Joseph Andretti about the pay increase. Webster pointed out that it was April and the employees had not been granted a pay increase. He asked Andretti if there was something wrong. Andretti replied, "Yes, there is something wrong. You guys are, you know, with this Union thing. They are not going to give you a raise." Andretti added that he had been told there was a pay freeze and employees would not be receiving pay increases that year.

With regard to the pay raise situation in the spring of 1995, warehouse checker Richard Polus testified that he asked Andretti why he was not getting a raise and Andretti said he would get back to him with an answer. The next day Andretti approached Polus and coworker Scott Fine. Andretti said he had spoken with Amy Faure and she told him that the employee wages were on freeze because of the union activity.

A few weeks before the election warehouse employee Frank Eggers had a conversation with Andretti. They were discussing unions and agreeing that strikes were not good. Andretti, during the course of the conversation, remarked that if the Union got in, "they are going to be more strict with their rules," and added that he had to do what he had to do.

After the open letter was given to management, Eggers had a conversation with Amy Faure and Craig Crohan. Faure asked him why he thought he needed a union and Eggers responded that he was tired of being below the poverty level for going on 3 years. Faure stated that she had an open-door policy, and Eggers said it was hard to get in to see her. Crohan told Eggers that if the Union got in, Eggers could no longer get a loan from the Company. Eggers said that it had taken 3 days to get the loan he had with the Company.

Subsequently, Eggers had another conversation with Craig Crohan in early May. Crohan was interested in how Eggers felt about the Union and Eggers told him someone was mad at Crohan and that was why the Union had been sought. Crohan responded that if the Union got in, and business was slow, he would have to lay off employees.

Eggers also had a conversation about the Union with William Crohan.[10] Crohan asked him what the men were looking for and Eggers said the Union was talking about $11 an hour for warehousemen.

In March or April, warehouse employee Robert Horn had a conversation with Craig Crohan about the Union. Crohan

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[7] See *Plastronics*, 233 NLRB 155, 156 (1977).

[8] See *Somerset Welding & Steel*, 304 NLRB 32, 47 (1991); *Great A & P Tea Co.*, 166 NLRB 27, 29 (1967); *Fontaine Body & Hoist Co.*, 302 NLRB 863, 870 (1991); *International Door*, 303 NLRB 582, 591 (1991); and *Suzy Curtains, Inc.*, 309 NLRB 1287 (1992).

[9] With respect to all conversations between Respondent's supervisors and management with employees, with the exception of those alleged to have occurred with employee Mark Murphy, I credit the employees version of the conversation and the fact they occurred over Respondent's version or denial that the conversations occurred. The employees' versions of such conversations are totally in concert with Respondent's otherwise demonstrable actions and written threats.

[10] At this time, William Crohan was warehouse manager and an admitted supervisor. He was subsequently demoted.

asked him what he thought about the Union and Horn said he was not thinking anything. Crohan then told him the Union was not going to get anything and that nothing would change with regard to rules and regulations.

Scott Fine was one of the employees who sought out the Union and was a signer of the open letter to management. After this letter was presented to management, Fine had a conversation with Amy Faure. Faure and her husband, Craig Crohan, approached Fine while he was working, and Faure called him a liar. She said he had said that he was going to vote against the Union and now he was for it. Fine responded that he did not know where this information came from. Craig Crohan added that if the Union were voted in the Company did not have to give employees the 401(k) plan and that pay could be whatever was agreed on. It could be as low as $6 an hour.[11]

About 2 weeks before the election, Fine had a conversation with Craig Crohan regarding pay raises. Fine asked Crohan about the annual pay raise and Crohan said the Company did have to give a pay raise because the open letter was presented to management before its year was up. He added a wage increase after this date would be considered a bribe.

About a week before the election, warehouse employee Preston Wells had a conversation with Craig Crohan and Amy Faure. According to Wells, Crohan told him that he did not need the Union and asked what was it going to do for him. Crohan reminded him of an employee named Larry Goggans and asked what the Union did for him. Wells was asking about a 3-percent cost-of-living wage.

I find each of the above related conversations to constitute unlawful interrogations of employees and unlawful threats of loss of wages and benefits and less favorable treatment because of the union activity. Specifically, the employees are threatened with the loss of company loans, an existing practice; loss of the 401(k) plan, an existing benefit; an expected wage increase, a past practice; layoffs, and stricter enforcement of work rules.[12]

A similar unlawful threat took place on the day of the election. After the vote was counted, employee Scott Fine ran into Craig and William Crohan and Kenny Horn. Fine testified that Craig Crohan was visibly upset and told Fine that the employees had done this, and from that point on, employees would have to follow the rules to a "T," and that there would not longer be any personal favors granted such as loans. Fine, as well as other employees, had been the recipient of such loans in the past.

C. *Respondent's Alleged Violations Following the Election*

The election was held May 5, and the Union won 6 to 4, out of 11 possible votes. Rick Polus was the Union's observer and Mike Newcomb was the observer for the Company. Following the election, Respondent took certain steps alleged to have been in violation of the Act.

1. Changes in hours and work assignments

Immediately after the election, Respondent systematically reduced employees' work hours and changed work assignments, location, and scheduled work hours. Most of these changes occurred on the day of the election, with the remainder occurring within the following days. I believe and find that these changes in employment practices were made in retaliation for the Union's victory in the election. Timing is a crucial consideration in assessing motivation.[13] The evidence shows without doubt that none of the changes would have been implemented absent a retaliatory motivation on the part of Respondent.

On May 5, the day of the election, employee Robert Horn was approached by Craig Crohan who took away Horn's pager and told him that he was no longer allowed to work at the Gateway and Great Lakes warehouses. Prior to the election, Horn had periodically worked at these other warehouses, in addition to his regular work at Illiana. On or about May 8, he was told the reason he could no longer work at the other warehouses was because he was a member of the Union and the other locations were nonunion. Because he was not allowed to work at the other two facilities, he lost the use of the pager, which had been given to him so he could be notified when he needed to go to those facilities and the use of the company pickup truck to get to them. Immediately after the election, Horn's hours were cut to 3 hours a day. He was informed of this cut in a memo from Craig Crohan. It reads: "Effective Monday, May 8, 1995, your new scheduled hours will be Monday thru Friday 8 a.m. to 11 a.m. at Illiana Transit Warehouse." Before this, Horn's hours were 7 a.m. to 3:30 p.m.

I believe and find that Horn's hours were reduced to punish him for the union victory and not allowing him to work at the other facilities was clearly a result of Respondent's decision to isolate its union employees from its nonunion employees. The General Counsel has demonstrated Respondent's union animus, its knowledge of its employees' union activities, and the timing of the changes in Horn's hours and work locations immediately after the election. Respondent gave no legitimate business reason for such changes and, thus, I find its actions with respect to Horn were unlawfully motivated and in violation of Section 8(a)(3) of the Act.[14]

Richard Polus also worked at both Gateway and Great Lakes warehouses. He last worked at Great Lakes in 1995. He last worked at Gateway in 1994. Following the election, Polus' hours were cut. His preelection hours were 8 a.m. to 4:30 p.m. His postelection hours were 9:30 a.m. to 3 p.m. He had previously worked on a forklift as part his job. Following the election, this job duty ceased and he was assigned to another building in the warehouse complex. This situation was explained to him by Craig Crohan. Crohan told him that his job was that of a checker, and that as the Company was now a union shop, he could no longer operate the forklift because of union rules. At the time Polus was taken off the forklift, a temporary employee who also operated the forklift continued to do so.

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[11] In addition to finding this encounter to be an unlawful threat of loss of benefits, I find that it creates an unlawful impression of surveillance of the employees union activities. See *Auto Sunroof*, 298 NLRB 717, 718 (1990); *Garney Morris, Inc.*, 313 NLRB 101, 116 (1993).

[12] See *Treanor Moving & Storage Co.*, supra; *International Door*, supra at 599; and *Peter Vitalie Co.*, 310 NLRB 865, 871 fn. 21 (1993).

[13] See *Sivalls, Inc.*, 307 NLRB 986, 1003 (1992).

[14] See *Wright Line*, 251 NLRB 1083 (1980); *Filene's Basement Store*, 299 NLRB 183 (1990); and *Treanor Moving & Storage Co.*, supra.

There was no showing by Respondent that any union rule prohibited Polus from continuing to perform all the duties he had performed prior to the election. There was no showing that any business reason existed for changing and reducing his hours of work or prohibiting him from working at Respondent's other two warehouses. Polus was one of the employees who presented the open letter to management to Respondent and was the union observer at the election. Crohan's statements to Polus at the time these adverse personnel actions were taken clearly reveal the unlawful anti union motivation behind them. I find Respondents actions in this regard to be in violation of Section 8(a)(3) of the Act.[15]

Prior to the election, for a few months, employee Preston Wells had been working a schedule from 12:30 to 9 p.m. Following the election, Craig Crohan, without explanation, changed Wells hours from 4 p.m. to 12:30. a.m. This schedule was changed a couple of times thereafter. Although Wells testified that his hours had been changed seasonally before the election, he contended that subsequent to the election the changes were so frequent that his "wife didn't know when he went to work." Also, on May 5, after the election, Andretti informed employee Eggers that he would be working in building 6 instead of building 5. On May 8, Andretti told Eggers that his start time would change from 9:30 to 8 a.m.

Eggers and Wells were signatory to the open letter to management. Wells, in fact, was the employee whose shoulder Amy Faure placed her hand on during one of the preelection employee meetings stating, "This is the man who tried to keep the union in when they de-certed in 1986." Eggers was one employee who was repeatedly questioned regarding his union sympathies during the critical period and also threatened with more strict rule enforcement and a wage freeze. All the requisite elements of a prima facie 8(a)(3) violation have been established with regard to these two employees. Respondent's knowledge and animus is apparent as stated above. The timing and attendant 8(a)(1) statements throughout the critical period, again, are more than sufficient to establish Respondent' motivation in implementing the changes to Eggers' and Wells' working conditions. Respondent has not shown by credible evidence any legitimate business reasons for these changes and I find them unlawful.[16]

2. Changes in company work rules

Respondent has for many years maintained certain work rules that applied to all three warehouse facilities. The rules were changed periodically, primarily to address changes in laws or safety regulations. Employees were given a copy of the rules when hired and asked to sign for them. Changes in the rules were made known to employees, though they did not receive nor sign for an updated set of rules. Following the election, however, for the first time, Respondent assembled all of its rules in a packet and required each of the Illiana unit employees to sign for them. Most employees signed for them at a meeting held on the Monday following the election. Those employees who were not present on that Monday were asked to sign for them individually. Though most of the rules stayed the same, there were some changes made in existing rules at this time.

The first change was that warehouse employees were barred from going into the company office. Prior to the change, these employees could use the office to speak with customer account representatives to solve problems in the warehouse. After the change, they would have to ask a customer representative to meet them outside the office to discuss problems. Warehouse employees had also been allowed to enter the office to use company phones to make personal calls. Following the change, employees were required to use a public phone for such calls. Employees had also been allowed to get water and coffee from the office. This ceased with the new rules. Amy Faure testified that access to the office was denied because the office is small and the employees coming in disrupted work. She testified that customer representatives had complained to her about warehousemen coming into the office. Faure also testified that the change took place at some point in March, prior to the filing by the Union of its representation petition.[17] Certain changes were made in safety rules. These changes were mandated by changes in law.

The testimony also shows that employees had been allowed to take informal coffee or smoking breaks in the Company's lunch area. This ceased and no breaks were allowed by the new rules, except for a half hour lunch.

Employees were also barred from the Company's accounting office. Certain of the night-shift employees had customarily gone to the accounting office to pick up their paychecks on Friday before their shifts because the banks were closed after the shifts. Beginning after the election, these employees had to pick up their checks at the company guard shack for a period of 2 weeks. This was then changed to allow them to pick up their checks at the office of the warehouse manager, or if the checks were not there, then they could go to the accounting office as before.

Prior to the election, as noted previously, Illiana employees on occasion were transferred on both a temporary and permanent basis between the three warehouse companies operated by Faure. This practice was followed so Respondent did not have to lay off employees if one of the warehouses lost customers and the need for a given number of employees dropped for a while. After the election this practice ceased. Amy Faure testified that the employees could no longer work at the other facilities because Illiana was in negotiations and the other facilities were nonunion. Craig Crohan told employees they could not work at the other facilities because they were "Shop men." He also told employees that they had to read and sign for the packet of rules because the Company was now a union shop. Employees were also told that the Company could not hire permanent employees until the union business got settled.

The timing of the changes in the rules, as well as Respondent's demonstrated animus strongly points to unlawful motivation for the changes set out above. Respondent has offered a legitimate business reason only for the change with respect to safety rules and access to the company office by

[15] See *Marshall Durbin Poultry Co.*, 310 NLRB 68, 77, 79 (1993); *Sivalls, Inc.*, supra.

[16] See *Marshall Durbin Poultry Co.*, supra, and *Sivalls, Inc.*, supra.

[17] If this date for the changes in the rules is correct, the changes were not made known to the employees until after the election, and thus, for any practical reason, the changes did not occur until after the election.

warehousemen, though it could also be argued that this was a continuation of Respondent's postelection practice of isolating unit employees from nonunion employees. The reason for the denial of access of employees to the accounting office was not explained and indeed, this rule was relaxed or dropped 2 weeks after its implementation. I find this further evidence that the rule changes were in retaliation for the union victory and in furtherance of Respondent's isolation program. As noted earlier, no reason whatsoever was advanced for ceasing the policy of transferring employees between the three warehouses operated by Respondent except the union affiliation of the Illiana warehousemen. No legitimate reason was offered for ceasing informal breaks or not allowing such breaks from taking place in the lunchroom. Given the General Counsel's prima facie showing of unlawful motivation, except for the rule regarding access to the company office, I find that Respondent has failed to offer a credible rebuttal and has thus violated Section 8(a)(3) of the Act by making such retaliatory changes.[18]

3. Changes in interpretation and enforcement of the attendance policy

Although Respondent already had an attendance point system in place prior to the union election, Richard Polus testified with regard to the enforcement of the attendance policy at Illiana. Polus testified that the attendance policy was changed after the election in that employees who finished their shifts, but did or could not work overtime, were assessed attendance points for "leaving early." Prior to the election, no attendance points were assessed in such situations. Polus was assessed attendance points in this manner even though he never left at the end of his shift with tasks unfinished. Scott Fine also testified that after the election he was informed that he would receive attendance points if he refused overtime at the end of his shift. According to Fine, he had refused overtime on numerous occasions after finishing his shift before the election and had never been assessed attendance points or even told that such points would be assessed. Fine also testified that he was assessed 1-1/2 points for an absence related to his son's hospitalization when he missed 1-1/2 days after the election. Fine stated this was a change in the attendance procedure because before the election, when he left early and missed the following day for the same reason, he was assessed only a half point under the attendance policy.

Respondent offered no reason for deviating from the prior practices under the attendance system with regard to overtime refusals or same reason absences. I thus find, given the General Counsel's prima facie showing of Respondent's animus, knowledge, and timing, that Respondent's changes in the enforcement of its attendance system was unlawfully motivated and violated Section 8(a)(3) of the Act.[19]

4. The Company's alleged unlawful withholding of wage increases and bonuses

In line with its preelection threats, Respondent did not grant a wage increase to unit employees at Illiana in 1995, though it did grant such an increase to employees performing the same duties at the Gateway and Great Lakes warehouses.[20]

Respondent produced a summary of the wage increases for the Illiana unit employees. It reflects the name of each unit employee and the date of a wage increase if any. In general, the evidence showed that the increases were usually for 50 cents an hour. Where the summary shows n/a, it means the employee was not on the payroll that year.

Year	*1990*	*1991*	*1992*	*1993*	*1994*	*1995*
Wells	5–27	[21] 3–3;5–19	4–12	5–1	[22] 5–27	0
Horn	[23] 0	3–17	4–12	5–1	5–27	0
Fine	n/a	0	10–11	5–1	5–27	0
Newcomb	n/a	0	4–12	5–1	[24] 5–27;7–30	0
Eggers	n/a	n/a	0	5–1	5–27	0
Polus	n/a	n/a	0	5–1	5–27	0
Webster	n/a	n/a	n/a	0	5–27	0
Great Lakes	[25] n/g	n/g	4–12	5–1	5–27	4–15
Gateway	[26] n/r	n/r	n/r	5–1	5–27	4–15

Reference to the chart reflects that general wage increases have been given at each of the involved warehouses for at least a 4-year period prior to 1995. The increases have been announced within 2 weeks to a month after the end of the Company's fiscal year on March 31. With respect to Christmas bonuses, it appears that all unit employees who were employed at Christmas received a bonus for at least 4 years prior to 1995.[27] None of the unit employees received a Christmas bonus in 1995. Gateway and Great Lakes employees did receive such a bonus.

The failure to pay the Illiana warehouse unit employees their Christmas bonus and spring wage increase while grant-

[18] See *Garney Morris, Inc.*, supra at 120; *Domsey Trucking Corp.*, 310 NLRB 777, 786 (1993).

[19] See *Teksid Aluminum Foundry*, supra at 721; *Treanor Moving & Storage Co.*, supra at 374.

[20] No wage increases had been granted at any of the three involved warehouses as of the date of hearing in 1996.

[21] Wells received two raises in 1990.

[22] On this date, a bonus was received in lieu of a wage increase.

[23] With the exception of 1995, in which no wage increases were given, unless otherwise noted, a zero indicates that the employee was hired in that year and thus did not get an annual increase.

[24] Newcomb received two pay increases in 1994.

[25] The employees at Great Lakes did not receive a general wage increase in 1990 or 1991.

[26] The were no records for Gateway until 1993.

[27] Christmas bonuses generally amounted to a week's pay.

ing such pay to all other eligible employees who were not engaged in union activities leads a clear and convincing inference that the Illiana warehouse unit employees were discriminated against because of their union activities. This inference is further supported by the direct threats in violation of Section 8(a)(1), as discussed above, that employees would not get their pay raises and bonuses if they selected the Union, and by the other acts of retaliation shown to have been taken against them in violation of Section 8(a)(3).

I have already found Respondent's assertion that it withheld the wage increase for Illiana unit employees during the preelection period because it would be considered a bribe to be pretextual and unlawful. Its other asserted reason for not granting the increase is that Illiana suffered a reduction in revenues in the 1994–1995 fiscal year.

Revenue figures for the three warehouses for the years 1993–1995 are as follows:

Year	*Illiana*	*Gateway*	*Great Lakes*
1993	$1,554,970	$2,209,342	$2,277,129
1994	2,028,595	2,204,649	2,599,546
1995	2,295,377	2,845,801	2,462,151

No profit-and-loss information was provided.

On April 6, Respondent's controller sent a memo entitled "State of the Business" to all employees of the three warehouses. With regard to the Illiana warehouse, it states:

> The year at Illiana has been a little disappointing. The expiration of the Union Carbide lease of approximately 50,000 square feet in December coupled with the loss of the aluminum coils in June and the Nor-Pac account in January has left the location with approximately 95,000 square feet of empty space. We have also experienced some difficulty with our largest customer on the negotiation of new rates. In light of these facts, the number of employees is the lowest at Illiana it has been in several years. Fortunately, the reductions were mostly accomplished by eliminating temporaries and transfers where possible. Obviously the empty space is a concern since property taxes, insurance and maintenance must go on. We are all aware of the problems and Sales is trying its best to find new customers to fill the space. Although there is currently nothing solid, Sales is spreading the word. We can all hope something to break soon.

Respondent's witnesses testified that wage increases are decided by a committee composed of the president, Amy Faure, the vice president of operations, Craig Crohan, and Helton. According to Helton, they look at the prior years' performance and the forecast for the coming year. He also testified that individual employee performance is taken into consideration. He contends that prior to the receipt of the open letter to management no decision had been made with respect to wage increases for 1995, noting that the fiscal year did not end until March 31. He testified that after March 31 it takes 3 or 4 weeks to make a decision about wage increases. This assertion is belied by the fact that wage increases for Gateway and Great Lakes were announced on April 15, 1995.

Faure denied that there was a specific date on which wage increases are given to Illiana, Great Lakes, and Gateway employees. She testified that wage increases depend on the performance of the particular warehouse and negotiations with customers on what the companies' price increases will be. The warehouses have contracts with their customers which range from annual to 3-year contracts. She testified that Illiana employees did not receive a wage increase in 1995 because Illiana's largest customer was in negotiations with the Company for a 30-percent discount. It ultimately agreed to a 10-percent discount. Faure testified that since the election there has been a decrease in business at Illiana. One of its customers, Martin Marietta, moved to Indianapolis and another stopped doing business in the midwest. However, the evidence reflects that the number of Respondent's customers regularly goes up and down. Subsequent to the election, Faure transferred the goods of one customer, H. B. Fuller, from Illiana to Gateway and transferred one Gateway customer to Illiana. There have been some other transfers back and forth.

Although Respondent contends business conditions were the reason for not granting wage increases and Christmas bonuses to unit employees, Respondent did grant nonunion employees of Illiana bonuses and wage increases. Joe Andretti received a $1500 bonus at Christmas. Judith Mossen, a housekeeper, received a bonus of $375, and Raymond Padron received a bonus of $350. Mike Newcomb was promoted to leadman when Scott Fine left, and received a hourly wage increase of $1.

I do not believe that the credible facts support Respondent's asserted reason for not granting the Illiana unit employees a wage increase and bonus in 1995. As noted above, no profit-and-loss information was provided for any of the warehouses, so there is no way of knowing which was profitable or unprofitable. Helton's April 6 memo mentions that the employee complement at Illiana had been reduced, which was a solution to the loss in total revenues. In that regard it must be noted that the revenues only dropped by $137,000 and were still significantly higher than in 1993, a year in which a wage raise and bonus were granted.

Further, at no point prior to this hearing were employees told that the reason they were not given their regular wage increase and Christmas bonus was due to the poor financial performance of Illiana. Respondent did tell employees that they would not receive a wage increase until a contract was reached with the Union and that any wage increases that went to any other facility that was not part of the election group could not be implemented at Illiana. In his April 6 memo to employees, Helton did not once mention that employees at Illiana would not receive pay raises due to the loss of customers or sales at that facility.

It is well established that in organizing situations an employer must grant benefits "as he would if a union were not in the picture."[28] I believe the "union in the picture" was the sole reason that Illiana unit employees did not receive a wage increase and bonus in 1995. The economic reason for

[28] *Great Atlantic & Pacific Tea Co.*, 166 NLRB 27, 29 (1967); *Domsey Trading Corp.*, 310 NLRB 777 (1993); *Parma Industries*, 292 NLRB 90 (1988).

the decision to withhold the increases and bonuses was not made known to employees. Only their union activity was given to them as the reason for such action. The degree of revenue loss was not shown to have significantly impacted the profitability of the Illiana warehouse, and it was not demonstrated by credible evidence that the profitability of the individual warehouse had any bearing on whether employees at those warehouses would receive a wage increase or bonus. Indeed, until the filing of the petition, warehouse employees at all three warehouses had been treated uniformly, that is, receiving a spring wage increase and Christmas bonus, regardless of the revenues of the individual warehouses. Moreover, the asserted financial difficulties at Illiana did not stop the granting of bonuses to nonunit employees. For all the reasons set out above, I find that the Illiana unit employees were not granted wage increases and Christmas bonuses in 1995 because of their union activity. Such discriminatorily motivated action violates Section 8(a)(3) and (1) of the Act.

D. *Allegations Regarding the Alleged Murphy Threat and Firing*

Respondent is alleged to have violated the Act with respect to its former temporary employee Mark Murphy in two ways. First, it alleged that he was threatened by Michelle Streeter. Second, it alleged that his termination was motivated by his support of the Union. Murphy was a temporary employee for Respondent from April 8 until May 6, 1996, when his assignment with Respondent was terminated. He was the direct employee of a company called Able Temps, which provides temporary employees to a variety of companies. He was sent out to Illiana following its request for a forklift operator. Before he began working at Illiana, Murphy was interviewed by its warehouse manager, Bill Franker. Franker asked about his experience and gave him a test on the operation of a forklift. The interview lasted about 45 minutes. After the interview, Franker took Murphy on a tour of the warehouse. They stopped during the tour for a break and Murphy asked about company benefits and what it took to get hired by the Company. Franker mentioned the 401(k) plan and said that he could get hired after 90 days. Franker also said that he thought a lot of other people should participate in the 401(k) plan, but with the union situation, a lot people were staying out.

Murphy was hired on as a temporary and on the second day at Illiana he was told by Frank Eggers about the Union. Murphy testified that subsequently, on April 12, 1996, he had a conversation with Michelle Streeter about a wage dispute. Murphy had been asked by Franker to work nights, and Murphy said he would not at his present wage rate. Franker said that he would get the wage matter straightened out with Streeter. Later that day, Murphy was told to report to Streeter, who he understood to be the office manager. They agreed on the matter of wages, and Murphy asked her what it took to get hired, noting he had sent an application in to Illiana before he was hired through the temporary agency. According to Murphy, Streeter said that she could not hire him off the street because she had to go through a temporary service because of the union situation. Murphy testified that he said that he did not want to be part of union busting. Streeter said not to worry because as of April 27, they were going to have some kind of vote. Murphy asked if the Union were voted in, would the Company shut down. According to Murphy, Streeter said yes. Streeter then advised him "wholeheartedly" not to get involved as all the Union could do was to cause Murphy trouble. She added that he should not talk to union members because he would get in trouble, adding that the Union was going to hurt him.

Streeter acknowledged having a conversation with Murphy about wages and having him fill out forms, but denied having spoken to him about the Union in any manner. I credit her denial. At the time of the conversation, almost a year had passed since the Union was certified and there was no organizing activity going on. There was no upcoming vote on anything and no reason for the matter of the Union to come up. Streeter was not alleged to have made any antiunion comments at any time prior to this conversation and it appears incredible to me that she would pick a conversation with someone she did not know to assert her alleged antiunion feelings. Moreover, she gave a credible explanation of why temporary employees were being used.

In that regard, Streeter testified that Respondent has used temporary employees off and on for the 6 years she has worked for the Company. For the first 4 years she worked there, temporaries were used for special projects. However, for about the last 2 years, they have been used as a way of screening employees. She testified that the Company was being flooded with job applications and the use of a temporary agency cut down on the time necessary to handle them. According to Streeter, the current method of using temporary employees was the idea of Joe Lilli, the operations manager. He had used them with previous employers, and felt that Respondent was spending too much time interviewing and too much money advertising for employees. She testified that this practice began prior to the union election. Use of the temporary agency cuts down on the time Respondent must spend with a job applicant because the agency has the prospective employee fill out the application, gives basic tests, initials interviews, and checks references. If a applicant is referred to Respondent, all it has to do is have a short interview and perhaps a skill test.

The question of whether Murphy was terminated out of antiunion animus is a closer question. Murphy started working nights shortly after he was assigned to Respondent. This lasted 1 week. During the week, a family medical problem arose and on April 19, Murphy went to Franker to tell him he could no longer work nights and that if Franker could not put him on day shift he would have to quit. Franker told him that he would try to get someone to switch shifts with him. Later that day, Franker told him he could start working days. Murphy then told Franker he could not work any overtime. According to Murphy, Franker indicated that would not be a problem.

After Murphy began working days, he attended a union meeting on Sunday, April 21, 1996. He attended this meeting with Preston Wells and Eggers. At the meeting, he met Union Representatives Larry Regan and David Born. According to Murphy, at this meeting he learned about the Union trying to get in at Illiana and some basic union policies. Subsequent to this event, Murphy was asked to work overtime on April 23, 1996. Leadman Mike Newcomb told him that there would be mandatory overtime for all employees. Murphy said he could not work overtime and Newcomb advised him to take the matter up with Franker. He saw Franker that day as he was clocking out. Franker asked if Murphy was

unaware there was mandatory overtime that day. Murphy reminded Franker of his inability to work overtime. According to Murphy, Franker said, "You better start working overtime and you can tell Larry I said so." Murphy assumed that Franker was referring to Union Representative Larry Regan. Franker denied having any knowledge about Larry Regan or his union affiliation. According to Murphy, he worked overtime once or twice after this incident. On other occasions he was asked by Franker to work overtime and refused, with Franker telling him he better get his attitude together.

Franker fired him on May 6, 1996. On that date he reported for work and found he had no timecard. Lead man Newcomb told him to see Franker, which he did. According to Murphy, Franker wrote him out a timecard and told him to go to work. He immediately ran into Eggers who expressed surprise at seeing Murphy, informing Murphy that he was supposed to have been fired. At lunch that day, he again met with Franker, who told Murphy they were getting rid of the night shift and thus did not need Murphy's services any more.

One of the reasons advanced for Murphy's termination was that he refused to return to a night shift. Murphy denied that Franker told him he was being assigned to the night shift during the first week of May and further denies refusing to go back to the night shift. Murphy believes that he was fired because he attended two successive union meetings in late April. He contends that prior to this activity management spoke nicely to him, but that after attending the meetings, they would hardly speak to him at all.

He contends that management had knowledge of his attendance at these meetings because leadman Newcomb overheard a conversation between Murphy and Eggers wherein they discussed what happened at one of these meetings. According to Murphy, Newcomb commented that he should stay away from the Union as it will get him into trouble. Newcomb added that they were not going to do anything for him because he had already lost his Easter ham and bonus. Murphy told Newcomb he was a temporary and could not do anything with respect to the Union until he was hired by Illiana. Newcomb did not testify.

The reasons given by Respondent for ending Murphy's assignment vary. According to Streeter, the decision to terminate the services of Murphy was made by Franker, who asked Streeter to have Able Temps to release him. Streeter testified that she was told at a time subsequent to Murphy's release that the reason for the release was his refusal to go back on the second shift.

Streeter drafted a memo regarding Murphy. It reflects his start date of April 8 and his end date of May 6, 1996. It states:

> We informed Able Temps that we were looking for a forklift driver for a 2nd or an off shift. They faxed us Mark Murphy's application. Mark Murphy had years experience, so we gave him a fork test, discovered he could drive and informed him it was for an off shift. In my conversation with Mark, he showed concern about working an off shift but wanted a job. He stated that he had very recently had a baby and preferred to be home at night. Mark called off on Wednesday April 17, because he said his father had a stroke. He come back to work on April 18 and said he needed to work days because his wife could not take care of a baby and a stroke patient. He also stated he was working on putting his father in a nursing home. We accommodated his request, but made it clear that it was a temporary situation and when things at home straightened out, he would have to work an off shift. Mark was then off on Wednesday May 1, because he said he was placing his father in a nursing home. He came back to work on May 2. On May 3, we told him that he was going to have to start working the off shift as of Monday May 6. He did not want to do that. I called Able and told them to release him for this reason. Able did not get hold of him on May 3 or through the weekend which we were not aware of until he showed up for work on Monday. We did let him punch in and worked him until noon. I believe at that time he was told to call Able and they released him. The only feedback I received from Able was that he was angry they sent him to a facility with union activity.

Franker testified that in his interview with Murphy he explained why the Company was using temporary services and that the opportunity to become a regular employee of Illiana depended on performance and attendance. He told Murphy that the open position was a second-shift position. At that time, Murphy expressed no problems with working second shift. Franker told him he would train for a few days on the day shift and then begin working second shift. With respect to the Union, Franker testified that he told Murphy "they were in a union situation, but the opportunity still existed to become a regular." Murphy volunteered that he was in a union at a previous job. He was returned to first shift because of the family problems. Franker considered this move to be temporary, though he said it was not discussed with Murphy.

After Murphy's father was moved to a nursing home, Franker asked him to return to the second shift. According to Franker, Murphy refused to do so. However, this was not the reason Franker gave for terminating him. Franker testified that the request to release Murphy came from leadman Newcomb, who told Franker that Murphy's work performance was not improving and that he pushed work off on other employees. It was this request which prompted Murhpy's termination.

Franker denied having any knowledge of union activity by Murphy. Franker also testified that the only overtime that Murphy was required to work was that necessary to complete a day's assignment. He remembered Murphy saying he could not work overtime, but noted that Murphy did work overtime to complete assignments. He denies ever telling Murphy that he was being released because Illiana was eliminating the night shift. Franker could think of no reason why Streeter told Able Temps that Murphy was let go because of his refusal to work second shift. He testified that he did not know what Streeter had informed Able Temps regarding the reason for his release.

In support of the General Counsel's contention that Respondent let Murphy go because of his support for the Union is Respondent's demonstrated animus toward union activity and Respondent's shifting reasons for his termination. In support of Respondent's position is its asserted lack of knowledge of any union activity or support by Murphy. I did not

find Murphy to be a credible witness.[29] I did not believe his allegations regarding Streeter and I do not believe his testimony where it conflicts with that of Franker, who did appear credible, even to the point of damaging Respondent's position. I do not credit Murphy's assertion that Franker told him, "You better start working overtime and you can tell Larry I said so." Instead I credit Franker's denial that he made such a statement and his lack of knowledge of Frank's attendance at union meetings. If Union support was all that it took for Franker to terminate Murphy, the question arises as to why he was hired in the first place. In the initial interview, Murphy admitted to Franker he had been a union member at a previous employer. Although Newcomb was not called as a witness, he is not in a supervisory capacity and his knowledge of Murphy's attendance at a union meeting cannot be imputed to management. There was no showing when Newcomb assertedly learned of Murphy's attendance at the union meeting and its relation to the date of termination. I credit Respondent's asserted lack of knowledge of Murphy's union activity and thus find that the General Counsel did not make a prima facie case under the criteria set out in *Wright Line*, supra.

E. *Respondent's Unlawful Unilateral Changes in Terms and Conditions of Employment*

Unilateral action by an employer affecting its employees' wages, hours, or working conditions during the course of a collective-bargaining relationship are normally regarded as per se refusals to bargain.[30] Such changes are also a strong indication that the employer is not bargaining in good faith. An employer violates the Act's proscription against unilateral changes when it makes material, substantial, and significant changes in employees' conditions of employment or working conditions without notice or bargaining with the representative about such changes.[31] Thus, employers have been found to violate Section 8(a)(5) by instituting the following changes without bargaining or notice to the Union: hours worked, change in work schedules, shift schedules, privileges, disciplinary procedures and rules.[32]

The Board has held that the withholding of Christmas "gifts" the employer had given to employees in each of the previous seven years was an unlawful change of a mandatory subject of bargaining.[33] Access to administrative offices and policies regarding telephone usage and enforcement of attendance programs have all been held by the Board to constitute mandatory subjects of bargaining.[34] The change in permissible work locations and changes in working hours have been held by the Board to constitute mandatory subjects of bargaining. Similarly, changes with regard to regularly granted wage increases, changes in unit employees' work assignments and limitations on breaks are also mandatory subjects of bargaining.[35] The hour at which employees may obtain their paychecks is a mandatory subject as are plant rules pertaining to breaks.[36]

Based on the foregoing, Respondent's changes of work rules, work hours, assignment and location, rule enforcement, wages, bonuses, breaks, office access, safety rules, phone access, and how employees receive their paychecks are each mandatory subjects of bargaining. The complaint alleges that these changes in employee working conditions, wages and benefits are violative of Section 8(a)(1) and (5) of the Act. Involved here are numerous changes in employees' terms and conditions of employment which either singularly or collectively affect employees' working conditions and are violative of the Act, as Respondent failed to notify or bargain with the Union regarding such changes. Furthermore, as it is clear that these changes were motivated by Respondent's antiunion animus following the election, an inference is warranted that Respondent deliberately ignored its obligation to bargain prior to implementing any of the changes.[37] In light of all the foregoing circumstances, Respondent could not lawfully alter its past practices or any other terms and conditions of unit employees' employment without offering to bargain with the Union.[38] Even without regard to Respondent's motivation for making the changes, it is clear that Respondent violated Section 8(a)(5) because the issue with regard to this type violation is only whether the changes in mandatory subjects of bargaining were made without notice to or an opportunity to bargain with the Union.[39] There is no evidence, or even the argument, that Respondent notified the Union regarding the changes made in the working conditions of warehouse employees at Illiana. Nor is there any defense, much less proof, of any emergency situation which obviated Respondent's obligation of prior notice to the Union.[40] Accordingly, Respondent is not relieved of its duty to bargain with the Union with regard to any of the discussed unilateral changes. By failing to notify and give the Union the opportunity to bargain over the unilaterally implemented changes, Respondent violated Section 8(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. The Respondent, Illiana Transit Warehouse Corp., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, General Drivers, Warehouse and Helpers Union, Local 142, International Brotherhood of Teamsters, is a labor organization within the meaning of Section 2(5) of the Act.

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[29] The reader is referred to Murphy's contention that at the union meeting he attended, union officials told him about the Union's attempt to get in at Illiana. The Union had already been certified for almost a year at this point.

[30] See *NLRB v. Katz*, 369 U.S. 736 (1962).

[31] See *Murphy Diesel Co.*, 184 NLRB 757 (1970); *Millard Processing Services*, 310 NLRB 421, 425 (1993).

[32] See *Pollution Control Industries of Indiana*, 316 NLRB 455 (1995); *Indiana Hospital*, 315 NLRB 647 (1994); *Tuskegee Area Transportation System*, 308 NLRB 251 (1992); *Treanor Moving & Storage Co.*, supra; and *Garney Morris, Inc.*, supra at 122.

[33] See *Gas Mach. Co.*, 221 NLRB 862 (1975).

[34] *Treanor Moving & Storage Co.*, supra at 386; *Kansas National Education Assn.*, 275 NLRB 638, 639 (1975).

[35] See *Treanor Moving & Storage Co.*, supra at 386; *Laidlaw Waste Systems*, 307 NLRB 526 (1992); *Pepsi-Cola Bottling*, 315 NLRB 882, 895 (1994).

[36] See *Somerville Mills*, 308 NLRB 425, 439 (1992); *Circuit Wise*, 308 NLRB 1091, 1106 (1992): *Harris-Teeter Super Markets*, 293 NLRB 743 (1989).

[37] See *Treanor Moving & Storage Co.*, supra at 386.

[38] See *Sivalls, Inc.*, supra at 1004.

[39] See *Treanor Moving & Storage Co.*, supra at 386.

[40] See Id. at 386.

3. Since June 2, 1995, the Union has been the certified collective-bargaining representative of Respondent's employees in the following appropriate unit:

> All full time and regular part-time warehouse employees employed at the Illiana Transit Warehouse Corp. at its facility currently located at 1334 Field Street, Hammond, Indiana 46320; but excluding all office clerical employees and all other employees, including technical employees, salespersons, guards and supervisors as defined in the Act.

4. Respondent violated Section 8(a)(1) of the Act by:

(a) In or about the first of April, through its agent, Joe Andretti, threatening employees with the loss of a wage increase because of their union and/or protected concerted activities.

(b) About May 5, through its representatives, threatening employees with loss of a wage increase because of their union and/or protected concerted activities.

(c) In or about the first week of May, through its agent, Amy Faure, threatening employees with loss of a wage increase because of their union and/or protected concerted activities.

(d) About May 4, through its agent, Amy Faure, threatening employees with loss of benefits including Respondent's 401(k) plan because of their activities on behalf of the Union and interrogating employees about their activities on behalf of the Union and creating the impression that their union activities were under surveillance.

(e) About May 8, through its agents, Craig Crohan and Bill Crohan, impliedly threatening employees with stricter enforcement of work rules because of their activities on behalf of the Union.

(f) About May 15, through its agents, Joe Andretti and Joe Lilli, impliedly threatening employees with stricter enforcement of work rules because of their activities on behalf of the Union.

(g) About April 15, by letter signed by Craig Crohan, threatening employees with a freeze of employee wage and other benefits because of their activities on behalf of the Union.

(h) About May 15, through its agent, Joe Andretti, threatening employees with a freeze of employee wage and other benefits because of their activities on behalf of the Union.

5. Respondent violated Section 8(a)(1), (3), and (5) of the Act by:

(a) About the dates set forth opposite their names, changing and/or reducing the work hours of the employees named below:

Preston Wells	May 5
Frank Eggers	May 8
Bob Horn	May 10
Rick Polus	May 15

(b) Changing the work assignments of unit employees.

(c) Changing the working conditions of unit employees by denying access to the Respondent's accounting office, eliminating breaks and the use of the lunchroom for breaks, refusing to allow unit employees to work at other facilities owned by Respondent's parent company and more strictly enforcing its attendance policy.

(d) About May 5, refusing to grant to its employees a regular yearly wage increase.

(e) About December, refusing to grant its employees a regular Christmas bonus.

6. Respondent violated Section 8(a)(1) and (5) of the Act by denying unit employees access to the Respondent's office and the use of its telephone.

7. The unfair labor practices committed by Respondent are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

8. Respondent did not commit other unfair labor practices alleged in the complaint.

REMEDY

Having found that Respondent has engaged in conduct in violation of the Act, I shall recommend that Respondent be ordered to cease and desist from such conduct and take certain affirmative actions deemed necessary to effectuate the policies of the Act.

Having unlawfully refused to grant its unit employees a wage increase and Christmas bonus in 1995, I recommend that Respondent be ordered to make those employees affected whole for any monetary loss they may have suffered as a result of Respondent's discrimination against them, with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[41]

Having unlawfully changed the work schedules and/or reduced the hours of work of employees Preston Wells, Frank Eggers, Bob Horn, and Rick Polus, I shall recommend that Respondent rescind these changes, restore the status quo existing before May 5, 1995, and make these employees whole for any monetary losses they may suffered as a result of such discrimination, with interest computed as set out above.

Having unlawfully unilaterally and without notice to the Union and without bargaining with the Union, changed the working conditions of unit employees by denying access to the Respondent's accounting office and general office and telephone, eliminating breaks and the use of the lunchroom for breaks, refusing to allow unit employees to work at other facilities owned by Respondent's parent company and more strictly enforcing its attendance policy, I shall recommend that Respondent be ordered to rescind such changes and restore the status quo existing prior to May 5, 1995, and, rescind and remove any record of any adverse personnel action it may have taken against unit employees by its changes.

Having engaged in the foregoing unlawful conduct without prior notice to the Union and without bargaining with the Union over these mandatory subjects of bargaining before implementing its changes, I shall recommend that Respondent be ordered, on request, to bargain with the Union as the exclusive collective-bargaining representative of the unit employees concerning these and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[42]

[41] G.C. Exh. 31 is the *Excelsior* list and should name all unit employees eligible for this remedy.

[42] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and rec-

Continued

ORDER

The Respondent, Illiana Transit Warehouse Corp., Hammond, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with the loss of a wage increase and other benefits because of their union and/or protected concerted activities.

(b) Interrogating employees about their activities on behalf of the Union and creating the impression that their union activities were under surveillance.

(c) Impliedly threatening employees with stricter enforcement of work rules because of their activities on behalf of the Union.

(d) Threatening employees with a freeze of employee wage and other benefits because of their activities on behalf of the Union.

(e) Unilaterally and without notice to the Union, changing and/or reducing the working hours of its employees in the unit described below.

(f) Unilaterally and without notice to or bargaining with the Union, changing the work assignments of unit employees.

(g) Unilaterally and without notice to or bargaining with the Union , changing the working conditions of unit employees by denying access to the Respondent's accounting office, denying access to Respondent's office and telephone, eliminating breaks and the use of the lunchroom for breaks, refusing to allow unit employees to work at other facilities owned by Respondent's parent company and more strictly enforcing its attendance policy.

(h) Unilaterally and without notice to or bargaining with the Union, refusing to grant to its employees a regular yearly wage increase and Christmas bonus.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain in good faith with the Union over the terms and conditions of employment of its employees in the following described unit:

> All full time and regular part-time warehouse employees employed at the Illiana Transit Warehouse Corp. at its facility currently located at 1334 Field Street, Hammond, Indiana 46320; but excluding all office clerical employees and all other employees, including technical employees, salespersons, guards and supervisors as defined in the Act.

(b) Make its affected unit employees whole for losses they suffered by Respondent withholding a scheduled general wage increase and Christmas bonuses in 1995, with interest.

(c) Rescind the changes made on or after May 5, 1995, in the work schedules and the hours of work of employees Preston Wells, Frank Eggers, Bob Horn, and Rick Polus, and make them whole for any monetary losses they may have suffered as a result of this discrimination against them, with interest.

(d) Rescind the unilaterally implemented changes in the working conditions of unit employees, including denying access to the Respondent's accounting office and general office, eliminating breaks and the use of the lunchroom for breaks, refusing to allow unit employees to work at other facilities owned by Respondent's parent company and more strictly enforcing its attendance policy, and restore the status quo existing prior to May 5, 1995.

(e) Rescind and remove any reference to any adverse personnel action taken against any unit employee pursuant to the changes in terms and conditions of employment, rules and enforcement of rules found unlawful.

(f) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Hammond, Indiana, copies of the attached notice marked "Appendix."[43] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 11, 1995.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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ommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[43] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."